

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 8754 of 2007(P)

OA.135/2000 of DEBT RECOVERY TRIBUNAL, ERNAKULAM

PETITIONERS:

- 1. V.SINILAL, PROPRIETOR,
M/S.ROSS INDUSTRIES, SINI NILAYAM,
PRAMADOM P.O., MALLASSERY, PATHANAMTHITTA.**
- 2. M.K.VIJAYARAJAN, AGED 68 YEARS,
SINI NILAYAM, PRAMADOM P.O., MALLASSERY,
PATHANAMTHITTA.**
- 3. OMANA V.RAJAN,
W/O.VIJAYARAJAN, SINI NILAYAM, PRAMADOM P.O.,
MALLASSERY, PATHANAMTHITTA.**

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:

- 1. THE SOUTH INDIAN BANK LTD.,
PATHANAMTHITTA BRANCH, PATHANAMTHITTA,
REPRESENTED BY ITS MANAGER.**
- 2. DEBT RECOVERY TRIBUNAL, ERNAKULAM.**
- 3. THE RECOVERY OFFICER,
DEBT RECOVERY TRIBUNAL,
ERNAKULAM.**

BY ADV. SRI. K.PRABHAKARAN, SC, SIB

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.8754 of 2007-P

Dated this the 15th day of March, 2007

JUDGMENT

This writ petition is filed by the petitioners seeking stay of confirmation of sale made by the Recovery Officer of certain properties belonging to them. They submit at the stage of sale proclamation made as per Ext.P1, they have filed the objection. The said objection has been overruled by the Recovery Officer by Ext.P2. So, they have invoked the appellate remedy available to them against it before the Debts Recovery Tribunal. But, unfortunately, the Tribunal is not sitting. So, this writ petition is filed seeking to quash the sale made on 14-2-2007. Interim prayer is also made to direct the third respondent Recovery Officer not to confirm the sale.

2. Against the sale made the petitioner has got a right to represent under Secs.60 and 61 of the Income Tax Act and if any representation is filed, only after the disposal of the same the sale shall be considered under Rule 63. Further, against the confirmation of sale, the petitioner has got a right of appeal under Sec.30 of the Income Tax Act to the Debts Recovery Tribunal. The Debts Recovery Tribunal is competent to set aside the sale. Therefore, it has power to grant stay also. Since the petitioner has already invoked the

appellate remedy before the statutory appellate forum against Ext.P1, the challenge of that order before this Court again is plainly unsustainable. This Court cannot go parallel with the very same proceedings of the D.R.T. But, the petitioner submits, the Debts Recovery Tribunal is not sitting. I am told that the Judicial Officer is sitting from 19-3-2007.

In the result, the challenge against Ext.P1 when an appeal against the same is pending before the Debts Recovery Tribunal is plainly unsustainable and accordingly, it is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

MS